

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MADELINE TORRES,

Plaintiff,

-against-

**MEMORANDUM
AND ORDER**

12-CV-6011 (NGG)

UNITED STATES OF AMERICA, et al.,

Defendants.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Plaintiff's application for permission to move to strike the answer of defendant United States of America is denied. See Letter (July 3, 2014) ("Pl. Motion"), Electronic Case Filing Docket Entry ("DE") #43. As an initial matter, the request for judicial relief should have been filed as a letter-motion, but was not. Moreover, the extreme sanction sought by plaintiff is entirely unwarranted.

Plaintiff complains that Timothy Lynch, the former Assistant United States Attorney ("AUSA") previously assigned to defend the United States in this case, "for the first time raised the issue regarding lack of control of [non-party witness] Dr. Irina Karban in his letter to the court on June 23, 2014," id. at 1, and that Mr. Lynch "misrepresent[ed] to the court that he was producing her 'as a courtesy . . .'" Id. at 2. However, plaintiff's accusations against Mr. Lynch are belied by the email exchange on which plaintiff relies. See attachment to Pl. Motion, Email from Timonthy Lynch to John T. Wisell on May 14, 2014 ("*Though I'm not able to compel [Dr. Karban] to appear for a deposition*, she has indicated that she is amenable

to appearing for one.”) (emphasis added).

Plaintiff also complains that Mr. Lynch has left government service and “I have not been advised who the new assistant U.S. Attorney is.” Pl. Motion at 1. However, two hours before plaintiff docketed his application, AUSA James R. Cho filed a notice of appearance on behalf of the United States, via ECF. See Notice of Appearance (July 3, 2014), DE #42.

That said, the United States has not complied with this Court’s Order dated June 23, 2014, DE #41, which directed the United States, by June 27, 2014, to provide counsel for plaintiff and for the co-defendants a mutually convenient location, time and deposition date for Dr. Karban’s deposition. In view of the recent change in counsel for the United States, the Court will not impose sanctions at this time. AUSA Cho is directed to promptly confer with Dr. Karban and with counsel for the other parties and to provide the necessary information by July 9, 2014. In addition, all counsel are directed to confer in good faith regarding any other discovery issues.

SO ORDERED.

Dated: Brooklyn, New York
July 3, 2014

/s/ Roanne L. Mann
ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE